Item 5c: Additional Material Received
Planning Commission July 19, 2012
PA2012-057

July 19, 2012

VIA ELECTRONIC MAIL

Newport Beach Planning Commission
c/o Janet Johnson Brown, Associate Planner
City of Newport Beach
3300 Newport Blvd.
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Re: Proposed Amendments to Wireless Telecommunications Facilities Ordinance

Dear Ms. Brown,

PCIA—The Wireless Infrastructure Association ("PCIA")[1] and the California Wireless Association ("CalWA")[2] writes to provide comment on the City of Newport Beach's proposed amendment to the Newport Beach Municipal Code to update regulations regarding wireless telecommunications facilities in light of the scheduled public hearing on the matter before the Planning Commission on Thursday, July 19, 2012. Attached please find the proposed amendments marked with comments. PCIA and CalWA respectfully request that Planning Commission defer action on this item until the industry has had an opportunity to sit down with staff and discuss the concerns reflected within this letter and in the attached mark-up.

PCIA and CalWA applaud the City of Newport Beach for recognizing that there have been numerous changes in Federal and State law regarding local regulation of wireless facilities, as well as a tremendous increase in the demand for wireless services that required the industry to change how it responds and keeps up with demand from its subscribers, especially in sophisticated communities like Newport Beach. We encourage the City to craft an ordinance that enables logical and intelligent deployment with an objective set of standards that comply with state and federal law and allows the timely provision of quality wireless service. To this end, in order to ensure that Newport Beach's efforts to modernize its wireless ordinance are as comprehensive as possible, PCIA and CalWA offer the attached mark-up of the draft amendments.

[1]PCIA is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, broadcasting and telecommunications services. With a mandate to facilitate the deployment of wireless infrastructure, PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of these communities.

[2]CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.

Despite the importance of wireless services and its potential for job creation, local review of the placement of wireless facilities remains a persistent barrier to the deployment of wireless infrastructure. For example, the proposed amendments to Newport Beach's Municipal Code could better facilitate the deployment of wireless infrastructure in order to bring wireless service to Newport Beach's residents. PCIA and CalWA hope to work together with the Planning Commission to find a solution for wireless infrastructure deployment that is responsive to the City of Newport Beach's needs and concerns. For this reason, PCIA and CalWA urge that Planning Commission defer action on this item to allow time to consider and discuss the industry's concerns.

The Need for Wireless Infrastructure

Wireless services, from basic voice communication to mobile broadband, enable communication, productivity, mobility, and public safety. Wireless infrastructure is the backbone of wireless networks; without it, wireless services cannot be delivered to users. Wireless infrastructure enables use of spectrum by providing the vital link between the end-user and the network. The strategic deployment of wireless infrastructure improves the efficient use of limited spectrum resources, which in turn improves the performance of wireless services.

Wireless providers are currently undertaking a multi-faceted effort to deliver next-generation wireless services, such as 4G LTE, in addition to ensuring that current and next-generation networks have the capacity to handle the surge in traffic that comes with the increased adoption rates of smartphones, tablets and other data devices. Wireless networks must adapt to growing capacity demands due to an 1,800 percent increase in traffic on U.S. wireless networks in the last four years[3] and a projected growth of eighteen times current levels of mobile data traffic in the next five years.[4] Mobile Internet users are projected to outnumber wireline Internet users by 2015, when a majority of Americans will utilize a wireless device as their primary internet access tool.[5] This will result in two billion networked mobile devices by 2015.[6]

The need for rapid deployment extends beyond mere consumer convenience. More than 70 percent of all emergency calls are placed using a wireless device.[7] The ability to access fire, rescue and police services may be significantly hindered without wireless infrastructure, especially for those relying on wireless as their sole form of voice communications. As noted by the Federal Communications Commission ("FCC"),

> [T]he deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation. The importance of wireless communications for public safety is critical, especially as consumers

[3] Mobile Future, 2011 Mobile Year In Review (Dec. 2011), *available at* http://mobilefuture.org/page/-/images/2011-MYIR.pdf.
[4] Quentin Hardy, The Explosion of Mobile Video, N.Y. Times, Feb. 14, 2012, *available at* http://bits.blogs.nytimes.com/2012/02/14/the-explosion-of-mobile- video/.
[5] Hayley Tsukayama, IDC: Mobile Internet Users to Outnumber Wireline Users by 2015, Washington Post, Sept. 12, 2011, *available at* http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile- internet-users-to-outnumber-wireline-users-by- 2015/2011/09/12/gIQAkZP7MK_blog.html?wprss=post-tech.
[6] Mobile Future, 2011 Mobile Year In Review.
[7] FCC.gov, Guide: Wireless 911 Services, *available at* http://www.fcc.gov/guides/wireless-911-services.

> increasingly rely upon their personal wireless service devices as their primary method of communication.[8]

As NENA observes:

> Calls must be able to be made from as many locations as possible and dropped calls must be prevented. This is especially true for wireless 9-1-1 calls which must get through to the right Public Safety Answering Point ("PSAP") and must be as accurate as technically possible to ensure an effective response. Increased availability and reliability of commercial and public safety wireless service, along with improved 9-1-1 location accuracy, all depend on the presence of sufficient wireless towers.[9]

For this reason, decisions on siting requests made by the personal wireless service industry were not intended by Congress to be subjected "to any but the generally applicable time frames for zoning decision[s]."[10] Thus, the adoption of special procedural schemes unique to wireless siting requests should be avoided.

The FCC Shotclock Declaratory Ruling and the California Permit Streamlining Act

In addition to the provisions of Section 337(c)(7) of the Communications Act of 1934 referred to in the staff report, subsection (B)(ii) of that section contains another requirement that the City should keep in mind when crafting its new ordinance. That provision requires that a "local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request."

The FCC recently adopted a Declaratory Ruling on November 18, 2009 under this subsection holding that "a 'reasonable period of time' is, presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications."[11] Given the rate at which demand for advanced wireless services has been growing, and in particular the growth in the demand for bandwidth as a result of adoption of smart phones and wireless-enabled laptops and tablets, the need for speedy local approvals of proposed wireless deployments has become truly critical to providing the wireless services consumers demand.

Indeed, the FCC's presumptive timeframe for action may be superfluous given that California law has, for decades, contained absolute deadlines by which action must be taken. As you are no doubt aware, the California Permit Streamlining Act imposes a 60-day time limit for approving or denying a requested permit after a project has been determined to be categorically

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[8] *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That* Classify *All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 ¶ 71 (2009) ("*Shot Clock Ruling*"), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd*, City of Arlington, Tex., *et al*. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

[9] *Shot Clock Ruling*, at 36.

[10] H.R. Conf. Rep. No. 104-458, 104th Congress, 2nd Sess. 208 (1996).

[11] *Shotclock Ruling.*

exempt from CEQA[12] or a negative declaration or mitigated negative declaration has been adopted.[13]

The Wireless Provisions in Middle Class Tax Relief and Job Creation Act of 2012

Staff failed to mention the Middle Class Tax Relief and Job Creation Act of 2012, enacted with bipartisan support and signed into law by President Obama on February 22, 2012. One of the measures included in the Act was the creation of a nationwide interoperable broadband network for first responders. In addition to authorizing the FCC to allocate necessary spectrum for this new interoperable network, the Act also contained provisions designed to establish voluntary incentive auctions of wireless spectrum, which are expected to raise $15 billion over the next eleven years. Seven billion dollars of the auction proceeds have been allocated for public safety broadband network build out.

The Act reflects an implicit acknowledgement that realizing the financial viability of the spectrum auctioned depends on the ease with which purchasers can deploy the infrastructure needed to utilize it. At the same time, it allays local concerns over the potential impact of the construction of new sites. In a carefully crafted attempt to address both industry and local concerns, Section 6409 of the Act streamlines, and thereby incentivizes the use of, modification of existing sites in lieu of new builds. Although the staff proposals reflect a similar recognition of the need for streamlined review of modifications, PCIA and CalWA provide herewith a detailed explanation of this recent law due to concerns that the definitions provided in the report fail to reflect those adopted and utilized by the FCC.

Section 6409 of the Act requires state and local governments to approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Section 6409 applies to “eligible facilities requests” for modification of existing wireless towers and base stations. The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

Many of the terms employed in the section are concepts that were hammered out in negotiations between local government and industry representatives in an agreement that was adopted by reference in regulations promulgated by the FCC. Thus, for example, "collocation" has been defined as "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."[14]

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[12]Gov. Code § 65950(a)(4).
[13]Gov. Code § 65950(a)(3).
[14]Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), *available* at 47 C.F.R. Part I, Appendix B ("Collocation Agreement"). *See also Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance,* Declaratory Ruling, 24

The same agreement also addressed the issue of what constitutes a substantial change in the size of a tower:

- The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. [15]

In this agreement, a "tower" is defined as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.[16] While the concept of a "base station" is not referenced in the agreement, the term has a long-established meaning consistently used throughout both FCC regulations and case law, namely a fixed location from which wireless signals are transmitted. For example, FCC regulations define a “base station” as "[a] station at a specified site authorized to communicate with mobile stations;" or "A land station in the land mobile service.”[17] We urge the Planning Commission to use these well recognized definitions within its Ordinance.

FCC Rcd 13994, 14021 1171 (2009) *("Shot Clock Ruling"), recon. denied,* 25 FCC Rcd 11157 (2010), *aff'd*, City of Arlington, Tex., et al. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

[15]Collocation Agreement, note, above.

[16]*Id.*

[17]See, e.g., 47 C.F.R. §§24.5, 90.7.

Conclusion

Reliable wireless communications are no longer a luxury. Wireless facilities provide a platform for broadband accessibility, creating a link from the City of Newport Beach to the world through high-speed Internet access. The City of Newport Beach has an opportunity to facilitate expanded wireless coverage to its citizens, businesses, and first responders by moving forward with amending its code in consideration of the wireless infrastructure industries' suggestions provided herewith.

PCIA and CalWA hope to participate in the ordinance revision process as it develops, if Planning Commission defers action on this item to consider the industry's concerns. We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach, CA.

Sincerely,

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EXHIBIT "A"

Chapter 20.49 – Wireless Telecommunications Facilities

CalWA Comment No. 1: Some recognition that this land use is in fact a "utility" (as defined in the States Constitution) and additional tolerance and balance similarly to how other utilities are viewed aesthetically should be afforded this critical land use as well. This "purpose" raises aesthetics above all other considerations unfairly as compared to other utility land uses.

Sections:

20.49.010 – Purpose and Intent.

A. **Purpose.** The purpose of this Chapter is to provide for wireless telecommunication facilities ("Telecom Facilities") on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:

1. Encourage the location of Antennas in non-residential areas.
2. Strongly encourage Collocation at new and existing Antenna sites.
3. Encourage Telecom Facilities to be located in areas where adverse impacts on the community and public views are minimized.

B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

20.49.020 – General Provisions.

A. **Applicability.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.

B. **Permit and/or Agreement Required.**

1. Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP), depending on the proposed location and Antenna Classes, in accordance with Section 20.49.070 (Permit Review Procedures).

CalWA Comment No. 2: This section needs to incorporate a reference to 20.49.100 where there could be ministerial permits issued for modifications. Also CalWA recommends a ministerial permit be an option for Class 1 and Class 2 facilities under the circumstance when the facilities are located in non-residential zones and are otherwise not visible.

2. Applicants who obtain a MUP, CUP or LTP (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).

C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:

1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.

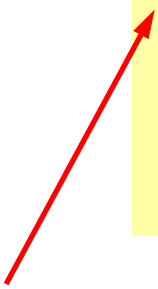
D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter, or for which the application for a proposed Telecom Facility is deemed complete prior to the effective date of this Chapter, in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.



CalWA Comment No. 3: Are legal nonconforming amortizations applicable under any circumstances to WTF's that are classified as "Legal Nonconforming Facilities"?

CalWA Comment No. 4: The definition of "Base Station" should include the entire structure and antenna facilities as defined by the FCC.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into distinct "antenna classes."

Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

CalWA Comment No. 5: This component of the definition is not clear as "Base Station" and "Suport Equipment" would seem to be inclusive of each other. Please clarify.

Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.

Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include the Base Station, DAS, Antennas or the building or structure to which the Antennas are attached.

Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

CalWA Comment No. 6: Overemphasis of "aesthetics". More tolerance and balance should be afforded this land use in recognition of the critical infrastructure and "utility" that it is.

20.49.040 – Available Technology.

All Telecom Facilities approved under this Chapter shall utilize the most efficient, diminutive, and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.050 – Location Preferences.

A. Preferred Locations. The following is the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest. Antenna Classes are the Telecom Facilities and their attendant accessory/Support Equipment separated into the following distinct Antenna Classes based on observed aesthetic impacts, as follows:

Class 1 (Camouflaged/Screened): A Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure. The Antennas, Base Station, and Support Equipment are fully screened so that they are not visible to the general public. Typical examples include:

- Wall or roof mounted Antennas that are screened behind radio-frequency transparent, visually-opaque screen walls that match or complement existing exterior surfaces of the building or structure to which they are attached.
- Antennas designed to be incorporated within an architectural feature of a building or structure such as a steeple, cross, cupola, sign, monument, clock tower or other architectural element.
- Base Station equipment that is contained within an existing structure, or placed into a new attached structure that matches or complements the existing exterior surfaces of the building or structure

CalWA Comment No. 7: This additional requirement is not warranted nor relavent to a Collocation. Please remove.

Class 2 (Collocation): A Telecom Facility with Antennas and/or Base Stations co-located on an approved existing Telecom Facility and mounted in the same manner with materially the same or improved screening, or the same camouflage design techniques as the approved or existing Telecom Facility. Class 2 Collocation Telecom Facilities also may incorporate flush-to-grade underground Base Station enclosures including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view.

Class 3 (Visible): A Telecom Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, and/or Lattice Tower. The structure is treated with some camouflage design techniques, but the Antenna panels and some portions of the pole, light standards, Utility Tower, or Lattice Tower are still visible. Typical examples include:

- Antennas mounted on the exterior of an existing building so that the panels are visible, but painted to match the color and texture of the building or structure.
- Antennas flush-mounted atop an existing pole or light standard that are unscreened or un-camouflaged, or attached to an existing pole or light standard utilizing a cylindrical Antenna unit that replicates the diameter and color of the pole or standards.
- Antenna panels installed on existing electrical or other Utility Towers, or existing Lattice Towers.

CalWA Comment No. 8: WTF mounted on existing utility infrastructure should be encourage and promoted via Class 1 designation.

CalWA Comment No. 9: This type of facility should be Class 1. Please reclassify as a facility that is within a rock or shrub type facility is very low profile and minimally visible, if at all.

Class 4 (Freestanding Structure): A Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility. The Telecom Facility is designed to replicate a natural feature or is a Monopole or Lattice Tower. The Antennas are either unscreened and visible, or camouflaged/designed to blend in with their surroundings. Typical examples include:

CalWA Comment No. 10: These types of facilities should be included with Class 3 type facilities as they are "stealthed/ camoflauged and should be incentivised.

- Antennas mounted inside or behind elements that replicate natural features such as rocks and shrubbery and located in hillsides or other natural areas where the Telecom Facility blends into the surrounding vegetation or topography (e.g. false rocks or shrubbery).
- A Telecom Facility consisting of Antennas mounted on or inside a freestanding structure that uses camouflage to disguise the Antennas (e.g. monotree, flagpole, or other freestanding structure).
- A Telecom Facility consisting of Antennas on the exterior of a freestanding structure that is unscreened/un-camouflaged (e.g. Monopoles or Lattice Tower).

Class 5 (Temporary): A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility on a site until a permanent (separately approved) Telecom Facility to provide coverage for the same general area is operational but such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040. A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility located on a site in connection with a special event, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), may be allowed only upon approval of a Special Events Permit, as regulated by Chapter 11.03. Class 5 installations include but are not limited to equipment mounted on trailers, trucks, skids, or similar portable platforms.

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations:

CalWA Comment No. 11: Facilities should be permitted in these zones if not utilized as a residential use.

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development consisting of four (4) dwelling units or less.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13, and notwithstanding any provisions contained in Title 13 to the contrary, shall be subject to the following:

CalWA Comment No. 12: Open space should be a permitted zone for this critical utility infrastructure.

1. All Support Equipment shall be placed below grade in the public right-of-way where the existing utility services (e.g., telephone, power, cable TV) are located underground. Exception: Any pedestal meter required for the purpose of providing electrical service power for the proposed Telecom Facility may be allowed to be installed above ground in a public right-of-way.
2. Whenever Feasible, new Antennas proposed to be installed in public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures.
3. Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.

CalWA Comment No. 13: The "General Criteria" primarily focuses on "aesthetics" and weights that criteria above all other concerns. No other utility infrastructure must adhere to such unbalanced criteria and wireless infrastructure. CalWA requests that the City begin to look in a more balanced and tolerant manner towards this utility as is afforded all other utility infrastructure.

D. Collocation Installations.

1. When Required. To limit the adverse visual effects of and proliferation of individual Telecom Facilities in the City, a new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1000) feet of an existing Telecom Facility is not Feasible, and all findings required to grant approval of a MUP, CUP or LTP for a Telecom Facility can be met, then such Collocation shall not be required.
2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards.

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and camouflage, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area. Where an existing structure is replaced to allow for the addition of a Telecom Facility, the replacement structure shall retain as its primary use and purpose that of the prior-existing structure. For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP or LTP for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

C. Height. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.

1. Maximum Height. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:

CalWA Comment No. 14: These types of facilities should be permitted in residential districts that are developed non-residential land uses.

a. Telecom Facilities installed on existing streetlight standards, traffic control standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.

CalWA Comment No. 15: Additional heights should be permitted up to 10 feet above the base height as additional height could result in lesser overall facilities and will allow for additional collocations further reducing the number of overall facilities needed in the future.

c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet in nonresidential districts only, and shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. As a condition of approval, flagpole sites shall comply with 4 U.S.C. § 1 *et seq.* (the "U.S. Flag Code").
d. Telecom Facilities may be installed on buildings or other structures to extend up to 5 feet above the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
e. Applications for the installation of Telecom Facilities proposed to be greater than 5 feet above the base height limit may be installed up to the maximum height limit for the zoning district in which the Telecom Facility is located in accordance with Section 20.30.060.C.2 (Height Limit Areas), subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit by more than 5 feet after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).

2. Over-Height Buildings or Structures. Stealth Telecom Facilities may be installed within or on structures that are permitted to exceed the height limit for the zoning district in which the structure is located, either by right under Title 20 or which have received a discretionary approval, so long as the height of the structure is not being increased. The standard of review shall be based on the type of installation and Antenna Classes being used.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. For ground-mounted Wireless Towers installed on public property or private property, unless the review authority determines a smaller setback would be appropriate based on the surrounding development or uses, the setback

CalWA Comment No. 17: This land use is by definition a "utility". As critical "utility infrastructure" some tolerance of "aesthetics" associated with utility infrastructure needs to considered and afforded this land use as it is afforded other "utilities". Over emphasis of "aesthetics".

CalWA Comment No. 16: This is unecessary and could exclude many good opportunities for appropriate locations. This requirement should be removed.

shall be the greater of: a) the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located; or b) 110% of the maximum height of the Wireless Tower including any Antenna or Antenna enclosures attached thereto.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to camouflage, disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen, camouflage, or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen, camouflage, or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

F. Screening Standards. Following is a non-exclusive list of potential design and screening techniques that should be considered based on the following Antenna Classes:

1. For Class 1 (Camouflaged/Screened) Antenna Installations:
   a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
   b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
   c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.

CalWA Comment No. 17: How is this section anticipated to be applied? Wholesale change out of the WTF would not be acceptable. Please clarify.

2. For Class 2 (Collocation) Antenna Installations:
   a. A Collocation installation shall use screening methods materially similar to those used on the existing Telecom Facility and shall not diminish the screening of the existing Telecom Facility.
   b. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas, Base Station, and Support Equipment from public view.

3. For Class 3 (Visible) Antenna Installations:
   a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

CalWA Comment No. 18A: The requirement for locating associated radio transmission/amplificaton equipment inside the streetlight pole or traffic control standard "without increasing the pole width or shall be mounted in a flush-to-grad enclosure adjacent to the base of the pole" is onerous and cost prohibitive. It is also unequitable treatment when compared to other utility infrastructure within the ROW. We request an option for above ground equipment be available.

Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.

b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

c. Antenna installations in the public right-of-way and/or on an existing or replacement streetlight pole or traffic control standard shall be limited to Antennas, Supporting Equipment, and cable components that are compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole.

CalWA Comment No. 18: If this additional screening is done this type of facility should be Class 1.

d. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.

CalWA Comment No. 19: This should be a Class 1 type facility

e. Antennas shall be mounted on existing poles wherever Feasible. If a new pole is proposed to replace the existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.

b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

CalWA Comment No. 20: In industrial/ manufacturing zones this design option is appropriate and helps reduce costs of facilities for all. Also in proximity to transmission lattice towers similar lattice tower designs are most appropriate.

c. The installation of a new Monopole or Lattice Tower is prohibited unless the applicant by use of compelling evidence can show to the satisfaction of the review authority that higher priority locations or Stealth Facilities are either not available or are not Feasible.

5. For Class 5 (Temporary) Antenna Installations:

a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

CalWA Comment No. 21: Need clarification on this Class?

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility including but not limited to the Base Station shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view. The following is a non-exclusive list of potential screening techniques that may be utilized based on the type of installation:

CalWA Comment No. 22: This is not a feasible option. Should be removed.

a. Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

b. Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility:

- Shall be visually screened by locating the Support Equipment in a fully enclosed building or in an underground vault, or
- Shall be screened in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
- Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors.

CalWA Comment No. 23: It is not feasible to provide above ground support equipment within the pole without some reasonable increase in width being permitted. This section should be redrafted.

c. Installations in a Public Right-of-Way. Support Equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be required by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

I. Nonconformities. A proposed Telecom Facility shall not create any new or increased nonconformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones.

J. Maintenance. The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:

1. Any missing, discolored, or damaged camouflage or screening shall be restored to its original permitted condition.
2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
4. All Telecom Facilities shall be kept clean and free of litter.
5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code.

CalWA Comment No. 25: For those facilities that are not visible and not within a residential zone nor within 150' of a residential zone a ministerial permit option to incentivize and reduce processing costs and time should be an option.

CalWA Comment No. 24: More incentivized zoning principles should be incorporated into the "Permit Review Procedures".

20.49.070 – Permit Review Procedures.

The procedures and requirements for preparation, filing, and processing of a permit application for a Telecom Facility shall be as specified in Chapter 20.50 (Permit Application Filing and Processing) unless otherwise noted below.

A. Permit Required. All applicants for Telecom Facilities shall apply for a MUP, CUP or LTP, from the Community Development Department, depending on the Antenna Class, height, and duration, as specified in the table below:

Table 4-1
Permit Requirements for Telecom Facilities

Antenna Class	Location of Proposed Telecom Facility		
	Located in a Nonresidential District more than 150 feet from a Residential (or Equivalent PC) District or Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Residential District or Equivalent PC District
Class 1 Antenna (a) (Camouflaged/Screened)	MUP	MUP	MUP
Class 2 Antenna (a) (b) (Collocation)	MUP	MUP	CUP
Class 3 Antenna (a) (Visible)	MUP	MUP	CUP

CalWA Comment No. 25: For Nonresidential there should be a lesser ministerial process to further insentivize the nonresidential locations.

CalWA Comment No. 26: No Collocation should require a CUP.

CalWA Comment No. 27: Should be allowed via MUP if within height limits of underlying zone and "stealthed".

CalWA Comment No. 28: For WTF located in Residential Zones with non-residential land uses, a MUP or ministerial permit should be afforded if completely screened.

CalWA Comment No. 29: Is this for emergency facilities? Not clear.

Antenna Class	Location of Proposed Telecom Facility		
Class 4 Antenna (a) (c) (Freestanding Structure)	MUP	CUP	CUP
Class 5 Antenna (a) (c) (d) (Temporary)	LTP	LTP	LTP

CalWA Comment No. 30: Has the City conducted Environmental Reviews on wireless facilities as a matter of routine or are most facilities determined to be "Exempt" from the provisions of CEQA (Categorically).

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located by greater than five (5) feet shall require review and action of a CUP by the Planning Commission. Pursuant to this provision, an application that would otherwise be subject to review by the Zoning Administrator would become subject to review by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP, subject to the required findings in Subparagraph H, below.

(b) The review procedure for Collocated Telecom Facilities shall be consistent with the applicable review procedure as identified elsewhere in this table depending on the type of installation and Antenna Class being proposed for the Collocation, unless the Collocated Telecom Facility meets the requirements of California Government Code § 65850.6, or involves the Collocation of new transmission equipment and is consistent with the provisions in Section 20.49.100 (Modification of Existing Telecom Facilities).

(c) Antennas mounted on or within flagpoles, and temporary Telecom Facilities shall not be permitted on properties either used or zoned residentially.

CalWA Comment No. 31: What is the purpose of this limitation? This excludes numerous appropriate land use locations that are zoned residential but may have other land uses, ie. churches which provide excellent locations in proximity to residential uses where these facilities are extremely necessary.

(d) Temporary Telecom Facilities shall be subject to the standard of review for an LTP, pursuant to Section 20.52.040 (Limited Term Permits).

B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

C. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

D. Review Process. Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

E. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be a permitted use not requiring a discretionary permit provided the underlying Telecom Facility was granted a discretionary permit and was subject to either an environmental impact report, mitigated negative declaration or negative declaration. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6, it shall be reviewed pursuant the review procedures contained in Section 20.49.070 (Permit Review Procedures).

F. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications.

CalWA Comment No. 32: Has it been the practice to conduct Environmental Reviews pursuant to CEQA for facilities in Newport Beach? If so then would this State Code section be invoked?

CalWA Comment No. 33: This requirement is inconsistent with State and Federal Collocation laws. Some recognition of the Class 1 type facility and collocations should be included herein. Also further incentivization of process would be the ministerial permit for Class 1 and collocations that are consistent with State Code section, 65850.6.

The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference. .

G. Public Notice and Public Hearing Requirements. An application for a Telecom Facility shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).

H. Required Findings for Telecom Facilities. The following findings shall apply to all Telecom Facilities:

1. General. The review authority indicated in Table 4-1 may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:

CalWA Comment No. 34: These criteria are extremely subjective and do not consider the technical requirements of the land use. These criteria are unbalanced with overemphasis on "aesthetics".

a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.

2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located by more than 5 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

CalWA Comment No. 35: Additional height should be permitted as required. An addiitonal 5' only is too onerous and will result in many more facilties being required

a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).

B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

CalWA Comment No. 36: CalWA requests that this process be concurrent rather than linear.

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP or LTP. Upon the issuance of a MUP, CUP or LTP, as required, and upon entering into an agreement, the applicant shall obtain any and all other necessary permits, including, encroachment permits for work to be completed in the public right-of-way, building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request for a modification of an existing Wireless Tower or Base Station that involves:

a. The Collocation of new transmission equipment;
b. The removal of existing transmission equipment; or
c. The replacement of existing transmission equipment

CalWA Comment No. 37: What is an example of a "Telecom Facility that does not qualify as a Wireless Tower or Base Station". Needs clarification.

shall be subject to a ministerial review and approval without the processing of a discretionary permit provided that such modification does not substantially change any of the physical dimensions of such Wireless Tower or Base Station from the dimensions approved as part of the original discretionary permit for the Wireless Tower or Base Station.

However, any modification to a Wireless Tower or Base Station which substantially changes the physical dimensions of either the Wireless Tower or Base Station, and any other modification to a Telecom Facility that does not qualify as a Wireless Tower or Base Station, shall be subject to the permits and authorizations required by this Chapter.

"Substantially Change the Physical Dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the City approval(s) for the Wireless Tower or Base Station as existing on February 22, 2012, that individually or cumulatively have any of the effects described below:

a. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a violation of any safety code adopted by the City, or by the state or federal government.
b. Changing the physical dimension of a Stealth Facility on a Wireless Tower, where the changes would be inconsistent with the design of the Stealth Facility, or make the Wireless Tower more visible.
c. Changing the physical dimension would require work that would intrude upon the public right-of-way, or any environmentally sensitive area.
d. Increasing or decreasing by five percent (5%) or more any of the following:

CalWA Comment No. 38: Nearly any additional facilities incorporated onto an existing facility could be interpreted to "make the Wireless Tower more visible". This needs to be clarified and relaxed to accomodate collocations without being determined to crossing this "threshold".

CaWA Comment No. 39: This threshold is vague and unclear. Delete or clarify.

CalWA Comment No. 40: This should be increased to 10%.

CalWA Comment No. 41: These additional constraints are confusing and unclear. Delete or clarify. A simple 10% increase in volume is simple enough.

- The height, width, or depth in any direction of any portion of the Wireless Tower or Base Station; or
- The area required for structures required to support the Wireless Tower, including but not limited to guy wires as approved and constructed through the discretionary permit process

Provided that in no event shall the height is increased to exceed the maximum height permitted in the applicable zoning district under the City's regulations.

e. Increasing by more than five percent (5%) any of the height, width, depth or area encompassed within any structure or object enclosing the Wireless Tower, such as a fence or line of shrubs or bushes.
f. Increasing any of an existing Antenna Array's depth, circumference, or horizontal radius from the Wireless Tower in any direction by more than five percent (5%).
g. Adding more than two Antenna Arrays to an existing Wireless Tower, or adding Antenna Arrays that, if the Antenna Array were an existing Antenna Array, would be of such depth, circumference or radius as to fall outside of item f (above), unless such Antenna Arrays were approved pursuant to Government Code Section 65850.6.
h. The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station, or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground. (Note: the proposed installation of a power back-up system [i.e., gas/diesel generator, fuel cell, battery system, etc.] is not Collocation of new transmission equipment.)
i. Any increase in any physical dimension of a Wireless Tower or Base Station or any equipment related thereto or any enclosure thereof at a Legal Nonconforming Facility.

Each application submitted under this section for a modification to an existing Wireless Tower or Base Station shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Wireless Tower as originally constructed, if available; a current photograph of the existing Wireless Tower and/or Base Station; and, a graphic depiction of the Wireless Tower and/or Base Station after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications to be performed will not trigger discretionary review under this section.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility required to be removed or restored to its pre-modification condition if:

a. Any material statement made with respect to the Telecom Facility is false; or
b. The modifications as actually made would have triggered a discretionary review.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by

CalWA Comment No. 42: CalWA has worked with jurisdictions across the State. It is our experience that when additional testing is required it is so far below allowable limits as set by the FCC that is to be unwarranted. Please delete this requirement as it adds additional burdens and expenses that do not yeild meaningful information.

the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq*. Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer, selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director;
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer;
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes the Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this Section D.